

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

560 SEVENTH AVENUE OWNER PRIMARY LLC,
Debtor.

Case #23-11289-pb
New York, New York
September 5, 2023
2:30 p.m. calendar

560 SEVENTH AVENUE OWNER PRIMARY LLC AND
560 SEVENTH AVENUE OWNER SECONDARY LLC

DOC 3 MOTION TO AUTHORIZE PAYMENT OF PRE-PETITION PAYROLL FILED
BY KEVIN J. NASH ON BEHALF OF 560 SEVENTH AVENUE OWNER PRIMARY
LLC; AND DOC 7 AMENDED MOTION TO APPROVE USE OF CASH COLLATERAL

- APPEARANCES BEFORE THE HONORABLE PHILIP BENTLEY -

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(Proceedings recorded by electronic sound recording)

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1 THE COURT: Good afternoon. We are here this
2 afternoon on, principally, the debtors proposed second interim
3 cash collateral order. And I believe we're also here for the
4 final payroll order. Mr. Nash, shall we begin with that? Do
5 you want to speak to that?

6 MR. NASH: Yes, if I could. Kevin Nash for the
7 debtor. If I could just speak to that. If Your Honor recall,
8 under the first day orders, we had what I would call a wage
9 order that allowed certain transition or overlap payrolls to be
10 made. That was done and completed. We did set up today's
11 hearing to see if there's any follow up objections to that,
12 because we styled it, if you're on a recall, as an interim, and
13 technically, today is the final. I have received no objections.
14 I don't believe then any were filed. And so, I would ask the
15 court to finally approve what we did on an interim basis.

16 THE COURT: All right. And does anybody else wish to
17 be heard with respect to the proposed payroll order?

18 MR. MASUMOTO: Good afternoon, Your Honor, Brian
19 Masumoto for the Office of the United States Trustee. Your
20 Honor, I don't have any opposition to the order per se, but I
21 did want to raise an issue because I believe it has some
22 connection to the cash collateral order, which has a cash
23 management component, which is that the wage order made clear
24 that payments to at least one employee, the hotel manager, I
25 believe, Grace Moore is being paid by the debtor. So, there are

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1 different accounts that may be implicated with respect to the
2 debtor. Our office is in communication with the debtor, and I
3 believe we have, in fact, a conference later this week regarding
4 the debtor's bank accounts. But given that, there are employees
5 of the debtor, who seem to be paid, other than by accounts that
6 are not strictly the debtor's account, and I wanted to make it
7 clear that approval of the payroll order, which may approve
8 payments for employees through other than the debtors bank
9 accounts, is not an indication of our approval of their cash
10 management system.

11 THE COURT: All right.

12 MR. SASLOFF: Your Honor, Robert Sasloff from Leech
13 Tishman. I am speaking on behalf of the manager, and I don't
14 have any objection to a final order being entered either. I
15 just wanted to put on a record that we wanted the terms of the
16 so called interim order to be carried through to the final
17 order. And with that, we would obviously support entry of a
18 final order.

19 THE COURT: And have you had an opportunity to see the
20 proposed final order?

21 MR. SASLOFF: I don't know if my partner, Fred Ringel,
22 had or had not. We presumed it was not going to be any
23 different than the interim.

24 MR. NASH: Kevin Nash, Your Honor. If I could just
25 respond? It would be the same form of the order. And the

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1 employee that we're talking about is a financial type of person
2 that the manager, Dream, through an affiliate, paid an allocated
3 share of that employee's salary. And I guess it was a
4 chargeback to the debtor. We are paying it directly under our
5 DIP account. And so, I'll make the appropriate adjustment for
6 the U.S. Trustee. It'll go through the DIP account, so it can
7 be clearly tracked.

8 THE COURT: All right. Mr. Nash, have you submitted
9 the payroll order in Word form to chambers?

10 MR. NASH: I did the interim, I will submit a final
11 sometime today or in the morning.

12 THE COURT: Okay. We will look for that, and I'm
13 prepared to enter that.

14 MR. NASH: Thank you.

15 THE COURT: All right. So, let's turn to the main
16 matter on the agenda, the second interim cash collateral order.

17 MR. NASH: Yes, Your Honor. Kevin Nash for the
18 debtor. Ms. Bagby's on for the secured creditor. After
19 Thursday's hearing, I think we did some negotiation, and we put
20 together on a consensual basis what we style as a second interim
21 order. It essentially carries us into early October. The
22 lender wanted some, I guess, added protections is the best way
23 to describe it, and more definitive events of a termination vis-
24 à-vis the settlement that was reached last week with the
25 mezzanine lender. So, we did incorporate a series of new

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1 provisions that track, which we referenced in the preamble, the
2 settlement that was reached with the mezzanine lender and
3 entered on September 1st.

4 And essentially, I look at this, and I think the
5 lender looks at it the same way, it's a stronger type of
6 document for the lender in terms of the ability to come into
7 court or to issue a notice of termination. But at the bottom
8 line level for the debtor, it does provide fair amount of use of
9 cash collateral, consistent with the budget, and we recognize
10 that the lender is going to have their eyes on the 45-day
11 period. And as we get closer to the end of the 45-day period,
12 there'll be obligations on the debtors to file a formal motion
13 for DIP financing and the like. We did discuss these new
14 provisions at length. I think it was a fair compromise on the
15 language, and I think that the cash collateral stipulation and
16 the revised order is a tough one, but a fair one. And the
17 budgets that we put together, I think, can make sense for the
18 next five to six weeks. Even though we have a 13-week budget,
19 we're really operating on a month-to-month basis, so to speak.
20 And I think it's a fair proposal, and it's something that the
21 hotel obviously needs, use of cash collateral, and I think it
22 gives the proper reporting and transparency to the U.S.
23 Trustee's point. Everything's going to run through the DIP
24 accounts, which have been opened at Wells Fargo Bank. And so,
25 they're in place. And I do think we'll be able to operate under

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1 this cash collateral order.

2 There isn't a media payment due this week of about 1.7
3 million. We did check the cash balances. I think there's over
4 \$2.4 million in the lockbox. So, there is cash available to
5 meet that payment. And I think in the main, it's a fair
6 allocation of risk on both sides.

7 THE COURT: Okay, thank you, Mr. Nash. I do have a
8 number of discrete questions and comments about some of the
9 provisions that show up in the blackline, some of the provisions
10 that have been added. But before I turn to those, let me ask,
11 does anybody else wish to be heard with respect to the proposed
12 order generally?

13 MS. BAGBY: Good afternoon, Your Honor. It's Ingrid
14 Bagby from Cadwalader, for OWS CRE Funding I LLC, the senior
15 lender. As Mr. Nash said, we did negotiate the additional
16 provisions at some length. Largely the order hues to the first
17 interim order. But as Mr. Nash noted, there are specific
18 provisions that are intended to provide additional triggers as
19 well as additional transparency as to what is happening at the
20 property during this interim period, if you will, between when
21 the stay is lifted and when at least we understand what will be
22 happening next with respect to ownership of the hotel. So, that
23 was the intention.

24 We did also, I would just flag for Your Honor, I'm
25 sure you saw it in the redline, paragraph 11. One of the

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1 provisions that the lender would like is the ability to come to
2 court very quickly if something changes at the property or we
3 have a problem under the order. And so, obviously, subject to
4 Your Honor scheduling and what the court requires, we would
5 like, at least the debtor, to be in agreement that we have the
6 right to come to court quickly if there is an issue.

7 THE COURT: I saw that, and I have no problem with
8 that provision. Okay. Anybody else? Mr. Masumoto, perhaps?

9 MR. MASUMOTO: Yes, Your Honor. Brian Masumoto for
10 the Office of the United States Trustee.

11 Your Honor, I'm not aware of whether or not a date has
12 been set for the final hearing. I did want to indicate that
13 pursuant to the initial or the first interim order, there was a
14 provision granting a 45-day period by which the debtor can come
15 into compliance under Section 345, with respect to
16 collateralization of any accounts. That 45-day period, I think,
17 expires on September 26th, I believe. And so, whatever second
18 interim order is entered, I'd want to make sure that that
19 period, for coming into compliance, would be extended at least
20 through the final hearing date.

21 THE COURT: So, have you had an opportunity to review
22 the terms of the order to see if it addresses that issue?

23 MR. MASUMOTO: I don't believe I've seen the proposed
24 order, the second interim proposed order. I did send an email
25 actually asking that. I wanted to make sure that the 45-day

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1 period doesn't expire prior to the final hearing.

2 THE COURT: So, let me ask if you have any other
3 comments, and then I want to hear from anyone else, and then Mr.
4 Nash can respond to everybody, including to the point you just
5 made.

6 MR. MASUMOTO: Again, I did not see any revised
7 budget, but based upon your direction at the first hearing, I
8 don't know whether or not, one, the carve out for professional
9 fees has been finalized or whether or not that's going to be
10 kicked over until a final budget is submitted. And also, I
11 believe as a carryover from the initial hearing, there was an
12 issue as to what burial expense would be attributed. I believe
13 all of those were part of forthcoming budgets. I don't know
14 whether or not they're incorporated in the current budget or
15 whether or not it'll be finalized in the final budget for the
16 final year.

17 THE COURT: So, I have to say, and I'm not sure
18 whether I'm addressing this to everybody or to one of you in
19 particular, but I really would hope that in the future, orders
20 like this, Mr. Nash, get circulated to the U.S. Trustee's office
21 because it's not particularly efficient to resolve issues like
22 this on the fly at the hearing.

23 MS. BAGBY: Your Honor, if I may be heard?

24 THE COURT: Sure.

25 MS. BAGBY: Just on that point, we did, I believe we

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1 copied, and my colleague is verifying, that we copied Mr.
2 Masumoto's office on our submission to chambers on Friday. So,
3 it was certainly our intention. I apologize if for some reason
4 -- email is a tricky thing for all of us. I apologize if it did
5 not make it through, but certainly, it was our intention and we
6 did attempt to make sure that his office received it on Friday.

7 THE COURT: Yeah, Mr. Masumoto, I'm looking at the
8 email now, it does look like it was sent to you.

9 MR. MASUMOTO: My apologies, Your Honor. I guess I
10 missed it, and so, I did not have a chance to evaluate. But I
11 just wanted to make sure, since this was an interim, it didn't
12 necessarily have to be finalized. I just wanted to make sure
13 that the issue was not dropped.

14 THE COURT: So, let me respond in two ways. First,
15 I'm not going to stick you with having missed your chance to
16 review this, but I would ask you, please, let's not have this
17 happen again.

18 MR. MASUMOTO: Understood, Your Honor. And my
19 apologies.

20 THE COURT: Okay. And I want to let you finish if
21 there's any other comments you wanted to make. And then after
22 everyone else has been heard, Mr. Nash can respond to your
23 specific comments.

24 MR. MASUMOTO: Nothing further, Your Honor.

25 THE COURT: Okay. Before we return the podium to Mr.

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1 Nash, would anyone else like to be heard? Okay. Mr. Nash?

2 MR. NASH: Yes, Your Honor, we did try to have burial
3 expenses contained in the carve out provisions under the order.
4 I think we hit the highlights of what the United States Trustee
5 wanted. We did open up the Wells Fargo accounts, which I think
6 will be able to meet the \$ 345 requirements fairly easily, and
7 we will file all the necessary papers on that.

8 The budget, I think we carried forward our original
9 budget. It was a 13-week budget, and I think we're in week
10 three or four of that budget. And it'll run, if my math is
11 right, for another five weeks under the existing 13-week budget.
12 So, I think we'll be in weeks either 3, 4, 5, 6 or 7, or 4, 5,
13 6, 7 or 8. And I think we're in pretty good standing in the
14 budget. I will, of course, run by Mr. Masumoto all of the
15 issues on \$ 345. I know that's a requirement of his office and
16 I will deal with the filing of any necessary paperwork on that.
17 We certainly wanted to have carve outs, as we discussed, for
18 burial expenses as well as a creditor's committee investigation.
19 And I have a limited carve out that I reduced in an effort to
20 get this cash collateral order in proper form.

21 THE COURT: So, let me do this. Let's just address a
22 process to bring to rest Mr. Masumoto's issues. Do you need the
23 order entered today or is tomorrow just as good? That's to you,
24 Mr. Nash?

25 MR. NASH: I think the only thing, what we did the

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1 last time, if I recall, we had a hearing on a Tuesday, we asked
2 that the court allow us to fund into ADP, and ADP funds on
3 Friday in any event. And I think today is Tuesday, so that's
4 the only urgency for this afternoon.

5 THE COURT: So, I want to understand what you're
6 asking me to do. I guess let me help you here. What I'm
7 inclined to do to deal with Mr. Masumoto's issues is give him
8 some period of time, whether it's a couple of hours or a little
9 bit more than that, after the hearing to review the proposed
10 order, to speak with you about whether he believes any changes
11 need to be made. I suppose now that you've heard his points,
12 you may want to think about whether there's a change or two you
13 need to make. But I'd like to give the two of you whatever time
14 you need to bring that to rest. Once that's done, I'd like you
15 to submit a Word version of the order with any changes you may
16 or may not make to chambers. If you do make changes, I'd like
17 you to submit a blackline against the version I'm currently
18 looking at, not one that includes all the prior changes. I just
19 want to see if anything's new.

20 MR. NASH: Fair enough, judge.

21 THE COURT: So, do you want to do that all today, so
22 that I can sign an order later today or tell me your preference.

23 MR. NASH: My preference is to take the afternoon and
24 speak to U.S. Trustee. The only thing I'm asking for you to do
25 today is authorize the payments into ADP, which won't be

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1 released until Friday in any event.

2 THE COURT: Does anybody on the Zoom hearing have a
3 problem with that request? So, I am prepared to authorize that.
4 Do you need me to do anything further? Or is what I just said
5 sufficient?

6 MR. NASH: That's sufficient. We did that the last
7 time, and it was sufficient.

8 THE COURT: Okay. All right. So, then we'll wait to
9 get your revised order with a blackline if there's any changes,
10 plus a cover note saying that everybody has signed off. And
11 once we get that we'll look at it and be prepared to enter it
12 promptly. It sounds like tomorrow would work.

13 MR. NASH: Yes, Your Honor.

14 THE COURT: Okay. All right. So, let's move on then,
15 to a couple of issues I had. The first was just perhaps more
16 curiosity than anything else, but I like to understand what I'm
17 signing. So, this question, I think, is really addressed to Ms.
18 Bagby, and it relates to pages 18 to 20 of the blackline. I'm
19 looking at the black line that was sent to chambers. So, it's
20 the subparagraph. The section you added called mezz borrow or
21 lift-stay termination events. And I've read them, and I guess I
22 just want to understand a little bit of the logic behind them.
23 Let me start with how I understand them, and then you'll correct
24 me or flush this out. Your concern is that we're now in a sort
25 of interim period, during which you don't have complete clarity

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1 into where the debtor stands with respect to refinancing and
2 whether it's likely to be able to refinance and pay off your
3 client's loan in full by the deadline. And as a result, you're
4 afraid that the debtor might perhaps do a bunch of things that
5 could harm the value of the property. Right so far?

6 MS. BAGBY: You're correct so far, Your Honor. I
7 think there's a next part to that, but I don't want to
8 interrupt.

9 THE COURT: Yeah, why don't you take over?

10 MS. BAGBY: Okay. So, I think Your Honor captured it
11 accurately that we are concerned in this interim period, and I
12 think I've expressed this to the court before, that depending on
13 what happens with the debtor's proposed search for financing, at
14 some point, the debtor may not be as incentivized to run the
15 hotel the way it is running the hotel now. And so, what we
16 tried to do with this, with what I'll call little sub two, which
17 is the termination events, as well as the following paragraph
18 little three, is to capture many things that would impact the
19 value of the hotel. Some of which, I would say, are things that
20 a debtor normally should come to the court and seek relief for,
21 for perhaps changing a significant contract. But what we tried
22 to do is say, we don't want these things to happen, and we would
23 like a certification from you that these things haven't
24 happened. And it's that second piece that's actually very
25 important to us, I think, because the debtor remains in

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1 possession during this period, but we need to make sure we have
2 transparency that everything is sort of running pursuant to the
3 status quo, and that all of the sort of steps of preservation
4 that a debtor would normally take are being taken. So, that's
5 the intention behind this.

6 THE COURT: So, I understand all that. That all makes
7 sense to me. The one thing that I'm a little puzzled about is,
8 what would the debtor's motivation be -- I mean, I think the
9 common thread of the various things you list are things that
10 would harm the hotel. And the scenario you're worried about is
11 where the debtor's principles conclude, they're going to lose
12 the hotel. So, it doesn't hurt them to harm the hotel. But how
13 does it help them?

14 MS. BAGBY: Well, I'm not sure that it -- first of
15 all, I certainly don't want to ascribe motives to anyone. This
16 is all, at this stage of the game, prophylactic from our
17 perspective.

18 THE COURT: And let me make clear, I don't mean to
19 sling any mud myself either. I'm just trying to understand the
20 thinking behind the lawyer's drafting.

21 MS. BAGBY: Absolutely. So, the concern is that it's
22 not perhaps necessarily that it would be malevolent intent.
23 Maybe it could be at some point. As Your Honor pointed out, the
24 principals may determine that they cannot keep the hotel. That
25 the financing is not available; they cannot keep the hotel. It

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1 may not help them to harm the hotel, but it may also just not be
2 motivational to go out of your way to make sure that everything
3 that needs to be done on a day-to-day basis is being done. So,
4 I'd liken it to an economic incentive. Right? Once you take
5 away the economic incentive for running the hotel, which is
6 presumably your equity interest, then you have to ask, well,
7 what incentivizes you to make sure that, for example, you're in
8 compliance with all of your legal obligations? And maybe the
9 answer is because you have to give a certification under your
10 cash collateral order.

11 THE COURT: Okay.

12 MS. BAGBY: But that's the thinking, Your Honor.

13 THE COURT: Okay. No, I appreciate that, and I
14 assumed that this is probably based on bitter experience that
15 you or your partners have had in past cases. So, I'm not
16 questioning it, I just wanted to make sure I understood it.

17 MR. NASH: Your Honor, if I could just weigh in?
18 Kevin Nash for the debtor.

19 THE COURT: Yes. Go ahead.

20 MR. NASH: I understood the concerns. I didn't
21 hesitate to negotiating incorporating language. Because
22 obviously, we do take pride in the way the hotel is operating.
23 There is \$77 million of equity that's been invested in this
24 hotel over and above the financing. And we've had some ups and
25 downs with various creditors, but operationally, we're proud of

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1 the fact where the hotel operates and how it's performing. And
2 so, we didn't really hesitate on this. These are, in my mind,
3 basic things that will be done no matter what, have to be done
4 no matter what. And so, we didn't look at it this as
5 punishment, we looked at it as the lenders want to keep an eye
6 on the ball, they want the owners to keep an eye on the ball.
7 And we intend to do that.

8 We also recognize that there is a 45-day window that's
9 going to come to an end. A lot of things happen towards the end
10 of windows. The money that we believe that will come into this
11 is overseas monies. And one of the managers has been overseas
12 since well before Labor Day. So, we want to make sure, no
13 matter what, everybody can be proud of the way the hotel has
14 been operated. The proof is in the pudding, so to speak. The
15 occupancy levels are good. The ADR room rates are good. The
16 revenue per room is good. It all was put forward in the
17 paperwork last week. So, we don't object to this provision. We
18 think it's intuitively correct on our part to be able to make
19 these certifications, and if there is a problem, to notify the
20 lender.

21 THE COURT: Okay. No, I appreciate both of your
22 comments, Mr. Nash and Ms. Bagby. And I want to make sure
23 nobody misconstrues my comments. Mr. Nash, I have no doubt that
24 your clients will act consistently in good faith, whatever the
25 situation turns out to be with respect to the refinancing. But

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1 I too have had many experiences where the lender and the debtor
2 don't trust each other, or are of a trust but verify mindset.
3 And so, I think it's very healthy that you and Ms. Bagby were
4 able to work out something that satisfies her clients concerns,
5 and that you're comfortable with. And I gather that's what
6 you've done. So, let's move on. I'm glad the two of you worked
7 out those issues and didn't have to come running into court to
8 ask for relief to deal with them.

9 My remaining comments and questions relate to
10 paragraph 7. It's on pages 24 to 25 of the clean version of the
11 order. It's the paragraph called carve out. And I think that
12 somebody was too hasty in drafting part of this paragraph
13 because part of it gets very complicated, and I think isn't
14 English and doesn't fit together. It needs to be clarified.
15 And I'm referring to, basically, the bottom third of page 24,
16 starting with the italicized word "provided". Do you see where
17 I'm looking? Tell me when --

18 MR. NASH: I'm just working off the redline.

19 THE COURT: Oh, okay.

20 MS. BAGBY: Yes, it's the bottom of page 25 of the
21 redline.

22 MR. NASH: Yes, I see it.

23 THE COURT: Okay. So, I guess, just to put this in
24 context, I think where the drafting might have gotten a little
25 bit mucked up is, you're continuing this long sequence with

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1 little one, two, three, and then where you put -- actually
2 little four and little five, I think that's a different
3 sequence. It should be like X and Y because I don't think,
4 logically, it's a continuation. I think the gist of what you're
5 saying is, professional fees, including a committee, if one is
6 appointed, are carved out subject to the following, right?
7 Provided, everything that follows the word "provided." And
8 then, the subject to the following consists of several concepts.
9 And I guess what I want to do is talk through what those
10 concepts are, make sure that we're all on the same page, and
11 then ask the two of you to tweak the language to make sure it
12 clearly incorporates these concepts.

13 So, here's what I think you're doing here or trying to
14 do, is the proviso says, that the amount of professional fees
15 exclusive of creditor committee investigation, and let's call it
16 creditor committee lien challenge fees, shall not exceed the
17 lesser of, the amount in the budget, or the sum of 75,000. But
18 it then gets confusing because you've already carved out
19 creditor committee lien challenge fees, but you then say the sum
20 of 75,000 for the debtor's counsel. So, I can't tell whether
21 the 75 is for debtor and committee together. I realize that the
22 odds of you having a committee are now very unlikely, but we
23 still have to assume it's possible, unless you want to just
24 change the drafting. So, is the 75 for everybody or just
25 debtors counsel?

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1 MS. BAGBY: Your Honor, it's Ingrid Bagby. Our
2 understanding was that it was solely for debtors counsel, that
3 that was the intention. I certainly understand Your Honor's
4 point with respect to the drafting. That could be much cleaner.

5 THE COURT: So, put aside the budget. I want to
6 return to the approved budget because I had some separate issues
7 with that. But put that aside for a second. If we're just in
8 the world of what's now little five, it's 75 for the debtors
9 counsel and then what for the creditors committee? I mean for
10 the creditors committee, it seems to me you address a subset of
11 their fees, but not the entirety of their fees. You address
12 their fees for lien challenge, which won't be more than 50.

13 MS. BAGBY: That's correct, Your Honor. I think the
14 intention, and again, I'll let Mr. Nash speak. But I think the
15 intention there was to ensure that they would get whatever was
16 in the allowed budget. Now, there's obviously nothing in the
17 allowed budget now since there isn't a committee, but presumably
18 in the future, as you said, there could be a committee and their
19 fees would be captured in the budget.

20 THE COURT: I see.

21 MS. BAGBY: So, I think this may be a drafting where
22 we need to clear up the drafting.

23 THE COURT: Okay. But just to understand the concept
24 and Mr. Nash will speak up if he sees it differently. But I
25 gather what you had in mind is, debtor won't spend more than 75,

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1 debtor's professionals, creditors committee won't spend what's
2 more than in the budget, and the portion of its fees that go to
3 lien challenge won't exceed 50. And that last piece would be a
4 subset of what's in the budget for the committee.

5 MS. BAGBY: That's correct, Your Honor.

6 THE COURT: Mr. Nash, are you on the same page?

7 MR. NASH: Yes. That was basically my understanding,
8 and I got to 75 because I believe that the budget was \$25,000 a
9 month. and I thought that this would be an August, September,
10 October type of coverage, and that would equal the \$75,000. And
11 I thought we might have budgeted something for a creditors
12 committee in the budget, and the big item, if there is a
13 creditors committee, would be the investigation of the lien and
14 that's covered by the \$50,000.

15 THE COURT: Okay. So, let's talk about the budget
16 because it's a different point, but it's intertwined. These are
17 all intertwined. Here's a problem I have there. Approved
18 budget is defined on page 14 of the blackline, and it's
19 basically the budget that's attached to this order, plus all
20 subsequent budgets prepared by the debtor and approved by the
21 lender. Right so far?

22 MS. BAGBY: That's correct, Your Honor.

23 THE COURT: Okay. So, right now the budget doesn't
24 have anything for anybody's fees. That's a problem. It's a
25 problem if you're trying to apply this paragraph. And there's a

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1 further problem, which is even if the budget attached to your
2 proposed order had fees, the definition on page 14 allows that
3 to be changed from month to month without court approval. So,
4 if I'm being paranoid or cynical, whatever the word is, and if a
5 committee were appointed, it leaves open the possibility that
6 the committee's fees get zeroed out or squeezed next month or
7 the month after without any judicial review.

8 MS. BAGBY: Your Honor, if I may respond to that?

9 THE COURT: Sure.

10 MS. BAGBY: And then, I'll defer to Mr. Nash with
11 respect to the reflection of his fees on the budget or the lack
12 thereof. So, the intention and how it's been working is that
13 there is a new budget, a refreshed budget, I would say every
14 week based on expenses. So, as of now, there wouldn't be a
15 committee line reflected. If there were a point in time in the
16 future where a committee were formed, obviously we would be
17 reflecting an amount for the committee, and I would expect that
18 that would be as part of a discussion, frankly, with committee
19 professionals and counsel. So, I --

20 THE COURT: Isn't the right way to deal with it -- I
21 mean, I realize that we're spending a lot of time now on
22 something that's very unlikely to happen, but nevertheless,
23 we're lawyers, we sort of have to do that. Isn't the right way
24 to put in some sort of mechanism that says, if a committee is
25 appointed, the proper carve out for their fees will be dealt

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1 with in an order that will come before the court for approval.

2 MS. BAGBY: Oh, absolutely, Your Honor.

3 THE COURT: Okay.

4 MS. BAGBY: We're more than happy to include that.

5 THE COURT: Let's do that. That's what was missing
6 here from my standpoint. And that would solve that part of the
7 problem. Then I guess it still leaves the sort of funny
8 question of, the initial approved budget, the one that's annexed
9 to the order I'm going to sign, doesn't have anybody's fees,
10 including the debtor, but you're asking me to sign an order
11 saying their fees won't exceed the amount that's not stated in
12 that budget. I guess that means that it won't exceed 75,000 and
13 that's the end of it. And if at some point you put numbers in
14 that budget, then that would be a potential lesser cap.

15 MS. BAGBY: I defer to Mr. Nash on his fees.

16 MR. NASH: Kevin Nash for the debtor. That's the way
17 I understood it. We had a discussion at \$25,000 a month.
18 That's how we got to \$75,000. We did keep those items open. I
19 guess they were still under discussion earlier on. But yes, the
20 \$25,000 a month is an appropriate cap in my mind.

21 THE COURT: Okay. All right. Then I guess maybe for
22 that piece of the issue I had, maybe we can essentially leave
23 that part of it as is, but with the understanding that, if at
24 some point there's a dispute over the amount of fees in the
25 budget to cover the debtor's professionals, the parties can

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1 bring it to me for a resolution.

2 MS. BAGBY: We understand, Your Honor, and agree.

3 THE COURT: Okay. All right. The final comment I had
4 here is just a typo, and that is, near the end of the passage
5 we're looking at, it says, to the extent permitted under
6 paragraph 10 hereof, it's now paragraph 9.

7 MS. BAGBY: We'll make that change, Your Honor.

8 HE COURT: Yeah. Okay. So, is the right way to leave
9 this, is that the two of you will put your heads together, tweak
10 the language in light of the discussion we just had, and submit
11 it to me? And I'll review it. And if I need to get you back on
12 a Zoom, I'll let you know. But I expect it's highly likely that
13 the two of you will solve it quite nicely between yourselves.

14 MS. BAGBY: We're happy to do so, Your Honor. I'm
15 hopeful we can do that.

16 THE COURT: I am too. Okay, very good. So, those are
17 the only comments I had. I will leave it to the two of you and
18 Mr. Masumoto to deal with the follow up, and we'll get your
19 revised order when we get it, and we'll turn to it promptly.

20 MR. MASUMOTO: Excuse me, Your Honor? Brian Masumoto
21 for the Office of the United States Trustee.

22 Your Honor, I was wondering, have the parties and
23 chambers agreed upon a final hearing date? Will the next cash
24 collateral hearing be a final hearing, and has that date been
25 agreed upon?

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1 THE COURT: I don't actually know the answer. Mr.
2 Nash, do you know the answer?

3 MR. NASH: We haven't called chambers, but I do
4 believe it's going to be either the week before October 15th or
5 around October 16th.

6 MR. MASUMOTO: All right, thank you. Your Honor, just
7 one final point. I did discuss prior to the hearing with Mr.
8 Nash, it is my understanding that the debtors will file their
9 schedules and statement of financial affairs by Thursday of this
10 week. I wanted to make sure that there was sufficient time for
11 the documents to be filed prior to the 341 meeting. That will
12 be a combined 341 meeting for both the primary and secondary
13 debtors.

14 THE COURT: When is that scheduled for?

15 MR. MASUMOTO: September 18th is the date for the 341
16 hearing.

17 THE COURT: Okay.

18 MR. MASUMOTO: I took it, that if in fact they filed
19 by Thursday, that should be sufficient time for parties to
20 review the filing for purposes of the 341 hearing.

21 THE COURT: All right, Mr. Nash, did you want to
22 respond to that?

23 MR. NASH: Yes. I ask till to Thursday. The
24 schedules are substantially complete. I just want another day
25 to review them, and we'll have them on Thursday on the docket.

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1 THE COURT: All right. I think that completes today's
2 hearing. Is there any final issue that anybody would like to
3 bring up?

4 MR. NASH: I wouldn't, Your Honor, I'd just like to
5 comment. Obviously, over the weekend, Jimmy Buffett died, and I
6 didn't realize. I kind of realized, but he was an iconic
7 figure, and a lot of the weekend was devoted to him, so I do
8 salute him.

9 THE COURT: You know, it makes me wonder, I hope that
10 his passing is not a negative for the debtors here. I would
11 think it might give you a short term boost in profits, but I
12 hope that long term, it bodes, at least not negatively, for the
13 enterprise.

14 MR. KUZWEIL: Your Honor, David Kurzweil on behalf of
15 Margaritaville Enterprises. We'd like to thank the court for
16 its acknowledgement of Jimmy Buffett, prior to starting the
17 hearing. So, thank you for that.

18 THE COURT: Well, he certainly was a real presence in
19 American life. So, my best wishes to everybody in the
20 enterprise and, by extension, in his family.

21 MR. KURZWEIL: Thank you, Your Honor.

22 THE COURT: All right, thank you, everybody.

23 MR. NASH: Thank you, judge.

24 THE COURT: Until next time.

25 MR. NASH: Yes.

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THE COURT: Take care.

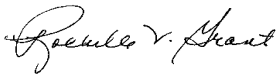
MS. BAGBY: Thank you.

MR. MASUMOTO: Thank you, Your Honor.

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CERTIFICATION

I, Rochelle V. Grant, approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in this matter, 23-11289-pb, held on 9/5/23.



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